

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-365

In re Applications of

THRESHOLD File No. BPH-890501ME
COMMUNICATIONS

GARRY E. and K. DIANE File No. BPH-890501MI
THOMPSON

For Construction Permit for a
New FM Station on Channel 288A
in Copperopolis, California

APPEARANCES

Donald *Martin* and *Spencer W. Weisbroth* on behalf of Threshold Communications; *Jerrold Miller* on behalf of Garry E. and K. Diane Thompson; *Larry A. Miller* on behalf of Chief, Mass Media Bureau, Federal Communications Commission.

**INITIAL DECISION OF ADMINISTRATIVE
LAW JUDGE WALTER C. MILLER**

Issued: January 30, 1992; Released: February 5, 1992

1. Two applicants remain in the running for a new FM station on Channel 288A in Copperopolis, California:¹ Threshold Communications and Garry E. and K. Diane Thompson.² The Chief, Audio Services Division designated one factual issue for hearing (the standard comparative issue) along with the ultimate issue. See 55 F.R. 38749 published September 20, 1990.

2. Thus, evidence was adduced on the following issues:

"To determine which of the proposals would, on a comparative basis, best serve the public interest.

To determine in light of the evidence adduced pursuant to the specified issues [sic], which of the applicants should be granted, if any.

3. As part of standard comparison, engineering coverage evidence was introduced. See 55 F.R. 38749 *supra*. at para. 4. We held the Prehearing Conference on November 26, 1990, an Evidentiary Admission Session on December 6, 1990, and the hearings on January 24, & 25, 1991. The evidentiary record was closed on March 27, 1991. See FCC 91M-1107.

4. Threshold, the Thompsons, and the Mass Media Bureau filed Proposed Findings of Fact and Conclusions of Law on April 5, 1991.³ Threshold filed Reply Findings on April 12, 1991 and the Thompsons filed their Reply Findings on April 15, 1991.

Issue 1 - the Standard Comparative Issue Description of the Applicants

5. *Threshold Communications* is a general partnership made up of two individuals, each of which own a 50% equity interest: James T. Arata and Douglas A. Wulff. Each has an equal voice in governing the partnership; they share the costs and the work, and each is entitled to half the profits.

6. Arata and Wulff have been partners since 1982. In 1982 they started operating a cable audio service, Creek Cable Radio KCRK. Since 1986, they have operated the KCRK School of Broadcasting. The Cable Audio Service is a laboratory for the broadcasting school students. Both the school and the Cable Audio Service are profit making enterprises. The California State Department of Education has approved the school.

7. Threshold will divest itself of KCRK (both the school and the Cable Audio Service) if their Copperopolis CP is granted.

8. *The Thompsons*. Garry E. and K. Diane Thompson are a general partnership. The partnership has two partners. Garry E. and K. Diane Thompson. They're husband and wife. Garry Thompson is a 40% general partner while his wife Diane is the 60% general partner.

9. Diane owns 60% of the application because she is female and has the greater knowledge of radio, and is in better position to have the controlling voice on major, long term decisions. However, with his 40% ownership, Garry Thompson will be the proposed general manager. That is because he has a more substantial business and sales background.

Diversification of Mass Media

10. Since *Threshold's* divestment pledge is being credited (Finding 7 *supra*.) neither Threshold, nor either of its partners holds any ownership interest in any medium of mass communications. The Thompsons also do not own or control, either individually or as a partnership, any medium of mass communications. So neither applicant is entitled to a diversification preference.

Best Practicable Service

11. *Comparative Coverage*. Threshold proposes to serve 22,975 people over an 1.813 sq. km. area within their 1 mV/m contour. The Thompsons will serve 22,412 people over 1,868 Km.

12. During daytime hours, all of the areas that each applicant would serve already receive five or more aural services. During nighttime hours, each would provide coverage to underserved areas; i.e., areas served by fewer than five aural services. However, neither proposes to serve white or grey areas.

13. The following chart sets out the extent to which each applicant will provide a new service to underserved areas during nighttime hours in uncommon service areas:

CHART

Applicant	Third	Fourth	Fifth
Threshold Thompson	15 (8.1 sq. Km) --	17 (13 sq. Km) 60 (65 sq. km)	210 (98 sq. Km) 69 (86 sq. Km)

14. Based on the foregoing (Findings 11-13 *supra.*), certain intermediate findings are warranted. Neither applicant is entitled to an overall coverage preference. They both will serve about the same population and area. The difference between Threshold and Thompson, 563 people (2.5%) is insignificant.

15. Similarly, regarding service to underserved areas and populations, neither applicant warrants a preference. The third, fourth, and fifth nighttime service that Threshold proposes is insignificant, as is Thompson's.

16. Neither applicant is entitled to a preference based on comparative coverage.

17. *Quantitative Integration-Threshold.* Threshold claims 100% quantitative integration. They intend to integrate both of their general partners into the proposed station's day-to-day operations on a full-time basis. James Arata, a 50% equity holder, will devote not less than 40 hours to being the proposed station's general manager. In that capacity he will hire and supervise all department heads, and devise, determine and oversee the implementation of all station policies.⁴ Arata will also be doing the station's engineering although he doesn't have a college degree in engineering (Tr. 25).

18. James Arata was born on June 12, 1954. He lives at 2712 Walnut Boulevard in Walnut Creek, California sharing a residence with his partner, Douglas Wulff. Walnut Creek is outside Threshold's proposed service area. He intends to move to Copperopolis if Threshold's CP is granted.

19. Arata has a business and management background. Since 1982 he has been the General Manager and Chief Engineer of Creek Cable Radio KCRK (see Finding 6 *supra.*). He is co-founder of the KCRK School of Broadcasting, and is currently the school's Executive Director. He is also an instructor. He teaches radio broadcasting courses. In order to carry out his integration proposal, Arata will withdraw from all other business pursuits which would interfere with his general manager's duties.

20. Although James Arata has not participated civically within Threshold's proposed 1 mV/m contour, he does have some broadcast experience. The following chart summarizes that experience.

Station	Time Period	Type of Employment	Position Held
KVSH(FM) Concord, CA	6/72 - 6/73	Part-time	Disc Jockey, Engineer
KNBA(AM) Vallejo, CA	5/73 - 6/74	Fulltime	Disc Jockey, Music Director, Program Director
KDFM(FM) Walnut Creek, CA	6/73 - 10/74	Fulltime	Disc Jockey
KKIS(AM) Pittsburgh, CA	10/74 - 8/75	Fulltime	Disc Jockey, Engineer
KUIC(FM) Vacaville, CA	8/75 - 8/76	Fulltime	Disc Jockey, Music Director, Program Director

KIOI(FM) San Francisco, CA	4/76 - 7/82	Fulltime	Announcer, Disc Jockey
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21. Since he is a White, non-Hispanic male, James Arata can claim no qualitative comparative enhancements.

22. Threshold also intends to fully integrate its other 50% general partner, Douglas A. Wulff into their proposed day-to-day operation. Wulff will be the Program Director and devote not less than 40 hours on a full-time permanent basis to that position. In that capacity he will hire and supervise all on-air talent, select and schedule the station's programming, and will devise, determine, and oversee the implementation of the station's programming policies. He will also handle the traffic and billing and the program log (Tr. 100-101). Programming the music will be Wulff's main function (Tr. 100; also see Footnote 4 *supra.*)

23. Douglas A. Wulff was born on July 29, 1955. He lives at 2712 Walnut Boulevard in Walnut Creek, California with his partner, James Arata. Walnut Creek is outside Threshold's proposed service area. If Threshold's application is granted, he will move to Copperopolis, sharing a residence with Arata (Tr. 123).

24. Douglas Wulff has a business and management background. Since 1982 (parttime until August 1983 and full-time since then), he has been the Operations Manager of Creek Cable Radio KCRK. He is co-founder of the KCRK School of Broadcasting, and is currently the school's Director of Training. He is also an instructor at the school. In order to carry out his integration pledge Wulff will withdraw from all other business pursuits which will interfere with his job as Program Director at the proposed station.

25. Although Douglas Wulff has not been civically active within Threshold's proposed 1 mV/m contour, he does have some broadcast experience. The following chart summarize that experience.

CHART

Station	Time Period	Type of Employment	Positions Held
KVSH(FM) Concord, CA	6/72 - 6/73	Parttime	Disc Jockey
KNBA(AM) Vallejo, CA	7/73 - 8/7 8/77 - 6/78	Parttime Fulltime	Disc Jockey Disc Jockey
KKIS(FM) Pittsburg, CA	10/78 - 8/83	Fulltime	Disc Jockey, Production Work,
KDFM(FM) Walnut Creek, CA	10/78 - 8/83	Fulltime	News, ⁵ Production, Public Affairs

26. Since he is a White, non-Hispanic male, Douglas Wulff can claim no qualitative comparative enhancements.

27. Before turning to the Thompson's comparative showing, there are some further comparative facts about Threshold that deserve mentioning because they provide a backdrop to Threshold's activities. These facts have limited value, however, because they were never fully developed by Threshold's opponent.⁶

28. As previously noted (Finding 6 *supra.*). Arata and Wulff have been partners since 1982. Originally the partner operated under the name "Contra Costs FM." It was in June 29, 1988 that they changed the name to "Threshold Communications." It was also in June 1988 (some 11 months before they filed for Copperopolis) that Threshold filed an application for a new station at Seaside, California (Tr.48, 103). Initially both Arata and Wulff planned to work at the Seaside station on a regular basis (Tr. 103). After they filed for Copperopolis they apparently changed their minds. They filed for Copperopolis on May 1, 1989.

29. At his deposition, Arata indicated that he wasn't aware whether Wulff had intended to work at the Seaside station (Tr. 56-57). But at the hearing Arata changed his tune. He said that he had discussed with Wulff his (Wulff's) plans to work at the Seaside station. He further stated that the two of them had "definitely" discussed the decision to abandon any plans to work at Seaside (Tr. 52-53).

30. Threshold let its Seaside application be dismissed by failing to pay the hearing fee or otherwise responding to the Hearing Designation Order. They filed nothing indicating their intent to withdraw their Seaside application. The record is silent on *when* the Seaside application was dismissed, and whether there was a period of time when Threshold faced two financial obligations: i.e., one for Seaside and one for Copperopolis.

31. *Quantitative Integration - The Thompsons.* The Thompsons claim 100% quantitative integration. They intend to integrate both their general partners into their proposed stations day-to-day operations on a full-time basis. First they propose that Garry Thompson who holds 40% of the partnership equity will be the proposed station's General Manager and Sales Manager. He will be full-time, working a minimum of 40 hours a week.

32. In his capacity as general Manager Garry Thompson will be in charge of all aspects of the station's operations. He will approve all policy and personnel matters, and have the final say on all matters involving the station's day-to-day operation. As Sales Manager, Mr. Thompson will directly supervise the sales department and make all the policy decisions in that department.

33. Garry Thompson was born on October 2, 1962. He lives at 2317 Rose Avenue, Modesto, California, with his wife and general partner, K. Diane Thompson. The Modesto residence is about 28 miles from Copperopolis, outside the proposed 1 mV/m contour.⁷

34. Mr. Thompson currently works as a salesman for Jorgenson and Company, a distributor of industrial safety equipment. Jorgenson and Company are located in Modesto, California. He will resign that position, or any other employment he may have so he can devote full time to the radio station.

35. Mr. Thompson has never resided in Copperopolis or the proposed service area and so can claim no civic activity. Although he has never been employed at a broadcast station, he has done volunteer work from time to time at KDJK(FM). KDJK is owned by his father-in-law and mother-in-law, Joe and Ann Gross (Tr. 136).

36. He has aided various KDJK promotions: i.e., the American Cancer Society Drive, the Chili Cook-off, and voter registration. He has delivered prize packages, picked up commercial dubs for the station, delivered and picked up promotional banners, and built radio shelves for the station. He has helped out the chief engineer from time to

time, refueled the diesel generator, painted the transmitter building, changed the air filter in the building, and changed the nitrogen tank which pressures the main transmitter line.

37. Since Garry Thompson is a White, non-Hispanic male, he can claim no qualitative comparative enhancements.

38. The Thompsons also intend to fully integrate their 60% general partner, K. Diane Thompson, into the proposed station's day-to-day operation. She will work a minimum of 40 hours as Station Manager of the proposed station. In that capacity she will set the policy for the station's internal operations; i.e., the business aspects (billing, accounting, traffic), programming and news, subject to the General Manager's approval. She will be directly supervising, hiring, and firing all staff in these areas. She'll be in charge of preparing and implementing station budgets, and implement the station's EEO program.

39. K. Diane Thompson was born July 3, 1968. She lives at 2317 Rose Avenue, Modesto, California with her husband and general partner. The Modesto residence is about 28 miles from Copperopolis, outside the proposed 1 mV/m contour.⁸

40. Since 1986 Ms. Thompson has been employed at FM station KDJK. Oakdale, California. KDJK is owned by her parents, Joe and Ann Gross. From 1986 - 1988, she served as a receptionist. She handled the telephones, sent and received facsimiles, filed, prepared monthly billing contracts, typed up sales proposals and sent out weekly station play lists.

41. Starting in 1988 she became the Assistant Office Manager. As such she makes and enters weekly deposits, processes computerized billing, answers account receivable inquiries, and assists the traffic manager with entering sales orders. She also assists the program director by ordering compact discs and cassettes from record companies and helping with promotions. In September 1990, for example, she helped with a promotion at a local mall to register votes in San Joaquin County.

42. She helps the production director when needed; she takes copy over the telephone; and she assists the public service director. When the office manager is unavailable, she assumes those duties.

43. K. Diane Thompson will resign her position at KDJK, and any other employment she may have if the Thompsons are awarded the Copperopolis CP.

44. Since Mrs. Thompson has never resided in Copperopolis or the proposed service area she can claim no civic activity. However, she does claim and will be awarded those qualitative comparative enhancements due a White, non-Hispanic female.

45. *Auxiliary Power.* Both Threshold and The Thompsons will install auxiliary power equipment at their proposed transmitter sites.

CONCLUSIONS OF LAW

Issue 1: The Standard Comparative Issue

1. Two mutually-exclusive applicants seek authority to operate a new FM station on Channel 288A in Copperopolis, California: Threshold Communications (Threshold) and Garry E. and K. Diane Thompson (The Thompsons). They will be analyzed under the criteria set

out in the Commission's 1965 *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, as modified by subsequent Review Board and Commission decisions.

2. Pursuant to that *Policy Statement* we will direct our analysis toward the Commission's two primary comparative objectives: (1) selecting the applicant that will offer the greatest diffusion of control of mass communications media; and (2) selecting the applicant that will offer the best practicable service to the public.

3. *Diversification of Mass Media.* Neither applicant (nor their principals) holds any attributable broadcast interests. See Finding 15 *supra*. So the Commission's first primary comparative objective will have no bearing on the outcome of this contest.

4. *The Best Practicable Service.* In deciding which applicant will offer the best practicable service, we will consider four basic criterion: (1) we will decide whether either applicant should be preferred because of a superior areas and population proposal (comparative coverage); (2) the extent each will integrate their ownership into the day-to-day management of the proposed station (quantitative integration); (3) the attributes that each integrated owner will bring to that day-to-day management (qualitative integration); and (4) whether the degree of quantitative and qualitative integration is enhanced by minority and/or female ownership.

5. Attribute (3), Qualitative integration, embraces such factors as local residence, participation in civic affairs, past education and business experience, past broadcast experience, and auxiliary power.

6. *Criterion - 1: Comparative Coverage.* Neither applicant is entitled to a preference based on comparative coverage. See Findings 11-16 *supra*. So that has no bearing on the outcome.

7. *Criterion - 2: Quantitative Integration.* Both the Thompsons and Threshold claim the maximum allowable quantitative integration, 100%. The Thompsons have established that the proposed duties of both Garry Thompson (40%) and Diane Thompson (60%) are policy-making and supervisory in nature. They therefore qualify for integration credit. Moreover, Threshold hasn't challenged the authenticity of those duties. So the Thompsons will be credited with 100% quantitative integration.

8. Sustaining Threshold's 100% quantitative claim is not nearly that clear cut. Arata and Wulff plan a 24-hour-a-day *automated* operation. There will be no announcing. On the other hand Arata has testified that if there will be announcing, he and Wulff will be the live announcers, one in the morning and the other during the evening. Each shift will last three or four hours. Such duties hardly qualify as policy-making or supervisory duties.

9. Threshold will have no clerical employees, and they hope to arrange for an answering service to answer the telephone on a trade-out basis. So there won't be many people to supervise or make policy for.⁹ Moreover, Wulff says that he will perform the non-policy making, non-supervisory tasks of handling traffic, billing, and the program log.

10. Still Threshold's 100% quantitative claim will be credited. Arata and Wulff will locate their station in the *Commission-allocated* community of Copperopolis. Copperopolis has a projected 1990 population of 194. See Footnote 1 *supra*. In fact, Calaveras County, where Copperopolis is located, had a 1980 population of 20,710. One can discern the "Mom and Pop" aura of both oper-

ations, by simply looking at their total proposed coverage. The Thompsons propose to serve 22,412 people and Threshold 22,975 people. A station operation with a large or even medium-sized staff will have real difficulty becoming financially viable in a market the size that the Commission's allocation contemplates. Threshold's 100% quantitative integration claim will be credited.

11. *Criterion - 3: Qualitative Integration.* Neither the Thompsons nor Threshold's principals (Arata and Wulff) are local residents, and neither applicant can claim a preference for *participation in civic affairs*. Wulff's and Arata's pledge to move to Copperopolis (population - 194) entitles them to a very slight preference for future residence.

12. Arata and Wulff have some *business and management experience*, along with some vintage (1972-1982) but limited (disc jockey) *broadcast experience*. See Finding 19-20 and 24-25 *supra*. However, the quality of that experience is overshadowed by the more recent and varied *broadcast experience* that Diane Thompson (60%) has obtained at KDJK, Oakdale, California. See Findings 40-42 *supra*. And although Garry Thompson's recent broadcast experience he has obtained as a volunteer at KDJK doesn't add much to their qualitative position (see Findings 35-36 *supra*), the Thompsons are entitled to a preference of average intensity for *broadcast experience*. Neither applicant obtains a preference for *auxiliary power*.

13. On balance, the Thompsons' are preferred under the qualitative integration criterion. Their preference for superior broadcast experience outweighs Threshold's slight preference for future residence.

14. *Criterion - 4: Minority and / or Female Enhancement.* Since both Arata and Wulff are White, non-Hispanic males, their 100% quantitative integration is not enhanced at all. See Findings 21 and 26 *supra*. On the other hand the Thompson's 60% general partner and the proposed station manager, Diane Thompson is entitled to the comparative enhancements due a White non-Hispanic female. So her 60% equity ownership and past broadcast experience will be so enhanced.

Issue 2: The Ultimate Issue

15. Under the Ultimate Issue we must determine, in the light of the evidence adduced under the standard comparative issue, which of the two applications should be granted.

16. Since neither applicant is entitled to a diversification of mass media preference, the case turns on who will offer the best practicable service to the public. The Thompsons are clearly superior. Their broadcast experience preference enhanced by 60% partner Diane Thompson's female status is clearly superior to Threshold's very slight preference for future residence.

17. Thus, the ultimate conclusion under designated issue 2 is that Garry E. and K. Diane Thompson is preferred over Threshold Communications because Garry E. and K. Diane Thompson will offer the best practicable service to the public in Copperopolis, California and vicinity.

SO, unless an appeal is taken from this Initial Decision or the Commission reviews the decision on its own motion, Threshold Communications' application (BPH-890501ME) IS DENIED; and Garry E. and K. Diane Thompson's application (BPH-890501MI) IS GRANTED.¹⁰

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller
Administrative Law Judge

FOOTNOTES

¹ Copperopolis is located in Calaveras County. According to Calaveras County authorities in Sun Andreas, Copperopolis had a projected population of 194 as of 1990.

² Two other applicants were dismissed early-on. Chester P. Coleman was dismissed on September 18, 1990 (FCC 90M-2954). Copperopolis Broadcasting Company was dismissed the same day (FCC 90M-2953).

³ Of course, the Bureau's evidence was limited to the engineering coverage issue. *See* Finding 3 *supra*.

⁴ Threshold plans an automated 24-hour-a-day operation. There would be no announcing (Tr. 36). At his deposition, Arata said that he and Wulff would be live announcers, one in the morning, the other in the evening. Wulff says that until after the November 1990 depositions, they had no real concrete programming ideas (Tr. 99). They would use part-time announcers to tape commercials for broadcast via the automation system (Tr. 42-43). At the beginning the station would have no clerical employees. They hope to arrange with an answering service to answer the telephone and to trade out that service. The idea of trading out an answering service for telephone calls didn't arise until after the depositions. But Threshold doesn't know if there are any answering services in the Copperopolis area (Tr. 102). Threshold's new service will be handled by a part-time employee (Tr. 26) based on information taken from local newspapers (Tr. 33, 97). They will not subscribe to a wire service such as AP or UPI.

⁵ Wulff's newswork at KDFM consisted primarily of taking items off the wire service printer and reading them; i.e., rip and read (Tr. 96).

⁶ This record stands out in contrast to the record developed in the Swanton, Ohio proceeding, MM Docket 88-432. There an applicant's opponent (Welch Communications) fully developed the background to a double filing. The most The Thompsons were willing to do was file a "Suggestion For Enlargement Of Issues." *See* FCC 91M-1092, released March 27, 1991.

⁷ Both Garry Thompson's and his wife's pledge to move to Copperopolis was stricken from The Thompsons' direct case exhibits. Since they hadn't so pledged in their integration statements, they constituted belated comparative upgrading attempts.

⁸ *See* Footnote 7 *supra*.

⁹ The Review Board is understandably and properly disenchanted with such penny-pinching proposals. *See Pepper Schultz*, 4 FCC Rcd 6393 (Rev. Bd. 1989).

¹⁰ If exceptions aren't filed within 30 days, or the Commission doesn't review the case on its own motion, the Initial Decision will become effective 50 days after its public release. *See* 47 CFR 1.276(d).